IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Inder Pal & Anr. Vs. State of Raj. & Anr.
S.B. CR. REVISION PETITION NO.737/2006

Against order dated 31.07.2006 passed by Addl. District & Sessions Judge, Sri Karanpur in Sessions Case No.4/2005.

DATE OF ORDER :: 11th Oct., 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Sushil Bishnoi for petitioners.

BY THE COURT:

By this revision petition moved under Sec.397 read with Sec.401 of the Cr.P.C., challenge has been made to an order passed by learned Addl. Sessions Judge, Sri Karanpur in Sessions Case No.4/2005, whereby the charges under Sec.307, 353/34 IPC and Sec.3/25 of the Arms Act have been framed against the accused petitioners.

It appears from perusal of the chargesheet and the statements recorded under Sec.161 of the Cr.P.C. that Shri Vikash Kumar, SHO Police Station, Ghamoorwali lodged the First Information Report on 06.06.2004 stating therein that under the instructions of the Circle Officer, he alongwith other police personnel proceeded for the area known as 13 ML in police jeep. The Circle Officer was apprehending breach of peace there, therefore, when they reached at the site, they parked their jeep near the field of Buta Singh, where they heard human noise, then the jeep was turned towards the side wherefrom the human voice was coming and in the dragon light it was seen that 15-20 persons including the petitioners were having pistols in their hands were there. Those persons seeing the police fired at them and when police party took position and also fired, they ran away from that place. After usual investigation, chargesheet was filed and the matter ultimately came up for trial before the learned Addl. Sessions Judge, who after hearing the parties, framed the charge vide its order dated 31.07.2006. Feeling aggrieved with the aforesaid order of framing charge, this revision petition has been filed.

The contention of the learned counsel for the petitioners is that learned trial Court has not properly appreciated the facts of the case. It is submitted that as per the prosecution version from a very long distance fire was made by country made pistols, therefore, it cannot be said that it is a case under Sec.307 of the IPC. He submits that many a persons were named in the First Information Report as accused but challan has been filed only against some of the persons. It is submitted that it is a false case which has been cooked up against the accused petitioners. The learned counsel in support of his submissions placed reliance on a decision reported in 2002 (1) Criminal Law Reports (Raj.) 223 – Chand Singh Vs. State of Rajasthan.

I have considered the submissions and carefully gone through the authority cited by the learned counsel.

A perusal of the challan papers clearly indicates that under the direction of the Circle Officer, the SHO alongwith police party went at the site in the night and there found the accused persons armed with pistols, who on seeing the police party opened fire on the police party. I do

not find any substance in the contention of learned counsel that from a very long distance the alleged fire from country-made pistols was made, therefore, it was not a case under Sec.307 of the IPC for the simple reason that it is a matter of evidence as to what was the distance and from where the accused party opened fire on seeing the police party. At the stage of framing charge, what is required to be seen is the material placed before the Court and in the instant case the First Information Report clearly makes a mention that accused party opened fire seeing the police party. Therefore, prima facie, intention part can be gathered for the purposes of framing charge. At the time of framing charge it is not necessary to examine the defence of the accused but what is to be seen at the time of framing charge is that prima facie the Court is satisfied that there appears material to show that a particular offence has been made out then such a charge can be framed. In the present case, the facts which have come on record clearly suggest that the accused petitioners when saw the police party, they first opened fire at the police party and thereafter the police party took position and started firing at them and thereafter the accused persons ran way, therefore, prima facie, it

cannot be said that the trial Court has committed error of law, which may require any interference by this Court. The authority, which has been relied upon by the learned counsel is not of any help to the accused petitioners at this stage because in the case of Chand Singh (supra), after full trial and taking into consideration the injuries sustained by the injured, this Court was of the opinion that case under Sec.324 of the IPC was made out.

After having considered the matter thoroughly, I am of the opinion that there is no merit in this revision petition and the same deserves to be dismissed.

The petition is hereby dismissed summarily.

(SATYA PRAKASH PATHAK)J.

/jpa